

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY	:	CIVIL ACTION
COMMISSION and APRIL SMITH	:	
	:	
v.	:	
	:	
DA VITA, INC.	:	NO. 07-cv-01720-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 18, 2009

The Equal Employment Opportunity Commission brought this gender-discrimination action, and the affected employee, April Smith, intervened as plaintiff. In September 2008, counsel for the parties reported that the case had been amicably settled, and this Court thereupon dismissed the action with prejudice, pursuant to Rule 41(b).

Under the terms of the settlement, as reflected in an extremely thorough release document, plaintiff April Smith was to receive "a payment in the amount of Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) ("Settlement Sum"), less required deductions." The sum was to be paid by the defendant "by a payroll check issued from a good funds account. Smith, and not Releasees, is and shall be responsible for any and all taxes, federal, state, or local, as may be imposed on Smith with respect to the settlement sum, including, without limitation, the employee share of FICA."

The defendant took the position that it was required to deduct income tax from the settlement sum. Defendant thereupon issued to Ms. Smith its check for \$8,025.50. Ms. Smith has now filed this "Motion to Enforce Settlement Agreement," asserting that she is entitled to receive the entire \$12,500.00.

It is doubtful that this Court has jurisdiction to consider Ms. Smith's motion. In dismissing the action with prejudice pursuant to Rule 41.1(b), this Court did not expressly reserve jurisdiction to enforce the settlement agreement, and the 90-day period allowed under the cited rule expired before the present motion was filed. Assuming, however, that this Court retains jurisdiction over the settlement, plaintiff's motion must be denied. Under the plain language of the release agreement, she was to receive \$12,500.00 "less required deductions," and that is precisely what she has received.

An Order follows.

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ORDER

AND NOW, this 18<sup>th</sup> day of February 2009, upon  
consideration of the motion of April Smith to enforce the  
settlement agreement, and defendant's response, IT IS ORDERED:

That plaintiff's Motion to Enforce Settlement Agreement  
is DENIED.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.